S.B. CIVIL MISC. APPEAL NO.1499/2006
(The New India Assurance Co. Ltd. Vs. Gebilal & ors.)

Date of Order :: 12th February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Anil Bachhawat for the appellant
Mr.Deepak Manaria)
Mr. Heera Singh) for the respondents

In this appeal by the insurer against the award dated 12.01.2006 made by the Motor Accidents Claims Tribunal [Addl. District Judge (Fast Track) No.5], Udaipur, HQ. Salumber in Claim Case No.253/2005 essentially questioning the quantum of compensation awarded, though the matter is posted for final orders on the prayer for interim relief, in view of the consensus stated by learned counsel for the contesting parties, the matter is disposed of finally.

For awarding compensation on account of loss suffered by the claimant due to the injuries sustained in accident, the Tribunal has allowed Rs.42,000/- towards loss of income for six months, Rs.2,16,000/- towards loss of future earning capacity with reference to 10% permanent partial disablement and while allowing other amount towards pains and sufferings and treatment expenditure has made an award in the sum of Rs.3,12,500/-; and after deducting Rs.25,000/- received by the claimant under No Fault Liability has allowed the

remaining amount of Rs.2,87,500/- together with interest at the rate of 6% per annum.

The insurer has assailed the award aforesaid being exorbitant and being against settled legal principles. On the matter being taken up for final orders on the prayer for interim relief, learned counsel appearing for the respondent-claimant in all fairness has conceded that the award on its quantification of compensation stands on a higher side and submitted that the same may be re-stated while allowing compensation in the sum of Rs.1,95,000/- with interest at the rate of 6% per annum from the date of filing of claim application. Learned counsel appearing for the appellant-insurer in equal fairness has agreed to the proposition and submitted that the award may be suitably modified. Learned counsel for the parties have placed on record the terms of settlement arrived at for suitable modification of the award.

Having examined the impugned award, this Court is satisfied that the figure arrived at by the parties in consensus remains that of just compensation admissible in this case and the award deserves to be modified accordingly. The amount allowed by the Tribunal towards loss of future earning capacity seems to be suffering from fundamental errors inasmuch as the assertion on average earning of the victim at Rs.10,000/- per month does not inspire confidence particularly when

examined in view of the fact that the victim, though stated to be practicing as a lawyer, filed his tax return for the first time only after the accident and the figures of income and expenditure account as stated therein cannot be co-related with the assertion of payment of Rs.1,500/- per month to the clerk, AW-2 Hansmukh Patel. In the overall view of the matter and in view of the injury suffered by the claimant of fracture of clavicle bone, it appears appropriate that only a sum of Rs.1,00,000/- be allowed towards loss of future earning capacity; and, therefore, the amount of Rs. 2,16,000/- allowed by the Tribunal on this count appears excessive. In this view of the matter, when excessive amount awarded by the Tribunal is removed out of the award amount of Rs.3,12,500/-, this Court is of opinion that the amount arrived at in consensus by the parties at Rs.1,95,000/- remains that of just compensation admissible in this case as no other deduction seems requisite.

Therefore, when the amount of Rs.1,95,000/- agreed to by the parties is awarded as just compensation, after deducting Rs.25,000/- already paid towards No Fault Liability, the claimant shall be entitled for an amount of Rs.1,70,000/- with interest at the rate of 6% per annum from the date of filing of claim application.

Accordingly, this appeal succeeds to the extent indicated above and with the consent of parties, the award is modified and re-stated allowing compensation in the sum of Rs.1,95,000/- to the claimant who shall be entitled to the remaining amount of Rs.1,70,000/- with interest at the rate of 6% per annum from 21.11.2002, the date of filing of claim application.

The insurer shall deposit the remaining amount payable under the modified award within 30 days from today with the Tribunal and the Tribunal shall issue necessary and appropriate orders for disbursement. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI), J.

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